

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

ROY LEE FAIRLEY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:03cv228MTP
APPEAL NO. 06-60785

ADRIAN KEYS, et al.

DEFENDANTS

ORDER REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL

The court has considered the appellant's applications for leave to proceed in forma pauperis on appeal, the certified trust fund account statement or institutional equivalent, and all consents and other documents required by the agency having custody of the appellant to withdraw funds from the account.

The application for leave to proceed in forma pauperis on appeal [159-1] pursuant to 28 U.S.C. § 1915 is **DENIED** for the following reason:

Pursuant to 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the court certifies that the appeal is not taken in good faith. Applicant was represented by retained counsel at trial. The issues sought to be raised on appeal, as stated in the Notice of Appeal, were not raised at trial. Moreover, applicant *confessed* the dismissal of many of his claims in response to the defendants' motion to dismiss made at the close of the his case.

Although this court has certified that the appeal is not taken in good faith under 28 U.S.C. § 1915(a)(3) and Fed. R. App. P. 24(a)(3), the applicant may challenge this finding pursuant to Baugh v. Taylor, 117 F. 3d 197 (5th Cir. 1997), **by filing a separate motion to proceed IFP on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of this order.** The cost to file a motion to proceed on appeal with the Fifth Circuit is calculated below, and if the appellant moves to proceed on appeal IFP, the prison authorities will be directed to collect the fees as calculated in this order.

If Roy Lee FAIRLEY files a separate motion to proceed IFP on appeal with the Clerk for the Fifth Circuit, he is assessed an initial partial fee of \$7.21. The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available, and forward it to the clerk of the district court.

Thereafter, the prisoner/appellant shall pay \$447.79, balance of the appeal fee, in periodic installments. The appellant is required to make payments of 20%

of the preceding month's income credited to the appellant's prison account until appellant has paid the total appeal fee of \$455.00. The agency having custody of the prisoner shall collect this amount from the trust fund account or institutional equivalent, when funds are available and when permitted by 28 U.S.C. § 1915(b)(2), and forward it to the clerk of the district court, 245 E. Capitol Street, Suite 316, Jackson, Mississippi 39201.

If the appellant moves to proceed on appeal IFP, the clerk shall mail a copy of this order to the inmate accounting office, Tammy Robertson, MDOC Inmate Banking Dept., SMCI, P.O. Box 1419, Leakesville, Mississippi 39451, or other person(s) or entity with responsibility for collecting and remitting to the district court interim filing payments on behalf of prisoners, as designated by the facility in which the prisoner is currently or subsequently confined.

SO ORDERED, this the 5th day of September, 2006.

/Michael T. Parker
United States Magistrate Judge